

HOPPER HOLDINGS CORP.
One William Street
New York, New York 10004

September 26, 1974

BY MESSENGER

Interstate Commerce Commission
Office of the Secretary
Washington, D.C. 20423

RECORDATION NO. 7669 Filed & Recorded

SEP 30 1974 2:13 PM

INTERSTATE COMMERCE COMMISSION

Dear Sirs:


We enclose herewith for filing, pursuant to Section 20c of the Interstate Commerce Act (49 U.S.C. § 20c) and Part 1116 of Title 49, Code of Federal Regulations, one executed original and two counterparts of an Agreement and Interim Lease between Hopper Holdings Corp., as lessor, and International Minerals & Chemical Corporation, as lessee. The equipment covered by the lease referred to above consists of covered railway hopper cars, more particularly described in Schedule A to said lease.

Also enclosed is a money order in the amount of \$50 in payment of the recordation fee pursuant to 49 C.F.R. § 1116.3(d).

Would you please acknowledge receipt of this document by signing and returning the enclosed copy of this letter.

Very truly yours,

HOPPER HOLDINGS CORP.

By 
President

Receipt acknowledged:

and notary public
I, an attorney at law, associated with
Cleary, Gottlieb, Steen & Hamilton, pursuant
to Section 2105 of the Civil-Practice Law
and Rules, do hereby certify that I have
compared the within copy with the original,
and have found it to be a true and complete
copy thereof.

Dated:

J. Webb Moniz
September 26, 1974

AGREEMENT AND INTERIM LEASE

J. WEBB MONIZ
Notary Public, State of New York
No. 60-2748320
Qualified in Westchester County
Certificate Filed in New York County
Commission Expires March 30, 1975

RECORDATION NO. 669
SEP 2 1974
FILED IN RECORDS
SEP 2 1974
CLERK OF COUNTY OF WESTCHESTER
THIS AGREEMENT is made and entered into as of the
day of September, 1974, by and between Hopper Holdings

Corp., a Delaware corporation having an office at 20 Exchange
Place, New York, New York 10005 (the "Corporation"), and Inter-
national Minerals & Chemical Corporation, a New York corpora-
tion having a principal place of business at IMC Plaza,
Libertyville, Illinois 60048 ("IMC");

W I T N E S S E T H :

WHEREAS, the parties desire that the Corporation
acquire and lease to IMC one hundred fifty-four covered rail-
way hopper cars (the "Cars") referred to in Paragraph III (C)
of the purchase agreement between IMC and ACF Industries, In-
corporated, a New Jersey corporation ("ACF"), effective
November 26, 1973, as amended by agreement entered into
April 3, 1974, and more particularly described in Schedule A
hereto, and that IMC advance the funds for the purchase of the
Cars, such advances to be reimbursed out of the proceeds of
long-term financing to be arranged by the Corporation;

WHEREAS, concurrently with the execution of this
agreement IMC has entered into an agreement (the "Purchase
Agreement Assignment") assigning to the Corporation its rights
as purchaser under said purchase agreement, and ACF has con-
sented thereto (said purchase agreement as so amended and

assigned being hereinafter referred to as the "Purchase Agreement"); and

WHEREAS, the parties desire to set forth their agreements and understandings with respect to the purchase and financing of the Cars;

NOW, THEREFORE, the parties hereby agree as follows:

1. Concurrently with the execution hereof, the Corporation is executing and delivering to IMC a promissory note, dated as of the effective date hereof, as evidence of its obligation to repay IMC for the advances of the purchase price for the Cars and otherwise hereunder made by IMC on account of the purchase of the Cars. The Corporation shall execute like promissory notes upon any subsequent like advance and to cover all other payments and the cost of the insurance to be provided by IMC pursuant to paragraph 2(f) hereof. (All such promissory notes from time to time executed and delivered are hereinafter referred to as the "Notes".) As collateral security for the Notes, the Corporation hereby grants, assigns and conveys to IMC continuing security interests in and to the Cars (provided that the execution and delivery hereof shall in no way impair or diminish any rights or obligations of the Corporation under the Purchase Agreement), and all accessories, equipment, parts or appurtenances appertaining or attached thereto, whether now owned or hereafter acquired by the Corporation.

2. (a) The Corporation does hereby let and lease the Cars to IMC, for a term commencing on the date of delivery of the Cars to the Corporation pursuant to the Purchase Agreement and expiring on the date of payment of all of the Notes, and IMC hereby accepts said lease. IMC has concurrently with the execution hereof paid the sum of One Dollar (\$1.00) as advance rental for the Cars for such term, and IMC agrees that it shall pay all taxes (other than taxes measured by the Corporation's net income), costs of maintenance and repairs, insurance and other use costs with respect to the Cars, and shall reimburse the Corporation for its reasonable operating costs and expenses. THE CORPORATION MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE CONDITION OR FITNESS OF THE CARS OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT TO THE CARS. The Corporation shall have no responsibility of any nature whatsoever to maintain or insure the Cars, or in respect of their use or operation. IMC shall have the right to make alterations or additions to the Cars, provided that their value shall not thereby be reduced.

(b) IMC shall be free to use the Cars for any lawful purpose, but shall hold harmless and indemnify the Corporation, its parent corporation, shareholders, officers, directors, employees, agents and its and their successors and assigns against any and all liability arising out of any of the transactions contemplated hereby, or out of the ownership, use, operation or condition of the Cars, including, but not

limited to, personal injuries and property damage arising from its use and any and all claims arising out of the use of any patented inventions in and about the Cars.

(c) The Corporation shall not take any actions which might in any way interfere with IMC treating the Cars as its own for income tax purposes, nor shall the Corporation make any claims under any representations or warranties contained in the Purchase Agreement with respect to the Cars, but shall appoint IMC its agent and attorney-in-fact to assert and enforce whatever claims the Corporation may possess against ACF or any other party.

(d) During the terms of the lease hereinabove granted, the Corporation shall not permit any liens, claims, charges or encumbrances on the Cars resulting from its own acts or omissions, other than (i) the security interests granted to IMC pursuant to paragraph 1 hereof, (ii) the lease granted to IMC pursuant to paragraph 2(a) hereof, (iii) the security interests to be granted to institutional lenders in connection with the long-term financing to be secured by the Corporation pursuant to paragraph 3 hereof, and (iv) the long-term lease mentioned in the next succeeding sentence. In connection with such long-term financing, the Corporation and IMC shall enter into a long-term lease of the Cars to IMC, and the Corporation shall have the right to assign such long-term lease, including the rentals payable thereunder, for the benefit of said institutional lenders. IMC shall have the

right to assign its interest in such lease or to sublease the Cars thereunder; provided, however, that as a result of such assignment or sublease the obligations of IMC to the Corporation under such lease shall not be reduced, modified or impaired.

(e) In the event that during the term hereof one or more of the Cars shall be destroyed or damaged to such an extent that IMC shall determine that repair thereof would be uneconomical or otherwise inadvisable, IMC shall so notify the Corporation in writing and this Agreement shall thereupon terminate as to the Cars identified in such notice and the aggregate principal amount of the Notes shall be deemed to be reduced by the aggregate purchase price of any such Cars, and neither party shall have any further obligation or liability to the other with respect to such Cars; provided, however, that the Corporation shall promptly transfer to IMC by appropriate documents all of its rights, title and interest in and to such Cars and in and to any claims that it may have as a result of the damage or destruction of such Cars and shall cooperate with IMC, as reasonably requested, in enforcing any such claims.

(f) IMC shall maintain public liability, property damage, fire and extended coverage insurance in respect of the Cars, in each case in such amounts and form and of such type as is customary with respect to similar railway hopper cars owned and operated under similar circumstances; provided, however, that in no event shall the

public liability and property damage insurance be in amounts less than are maintained by IMC with respect to other railway hopper cars owned or operated by it, nor shall fire and extended coverage insurance be in an amount less than the aggregate principal amount of the Notes issued by the Corporation pursuant to paragraph 1 hereof. Such policies of insurance shall name the Corporation as an additional insured as its interest may appear and shall require that at least 30 days' prior written notice of cancellation shall be given to the Corporation.

3. The Corporation shall use its best efforts to arrange for the long-term financing of the total Capitalized Cost of the Cars at the lowest feasible interest rate. After arrangements for the sale of notes to be issued in connection with the long-term financing (the "long-term notes") have been negotiated, the Corporation shall notify IMC of the annual rental rate which would be required under a long-term lease of the Cars by the Corporation to IMC in order to provide a basis for such long-term financing. IMC shall promptly notify the Corporation whether it accepts or rejects such rental rate. If it rejects such rental rate, the Corporation shall continue to use its best efforts to achieve the lowest feasible interest rate for the long-term notes. If the Corporation, having used its best efforts required hereunder, has failed to present rental terms acceptable to IMC prior to the maturity of the

Notes, this Agreement and all Notes issued pursuant to paragraph 1 hereof shall be cancelled, and neither party shall have any further obligation or liability to the other with respect to such Notes and this Agreement; provided that promptly thereafter the Corporation shall transfer to IMC by appropriate documents all rights, title and interest in and to the Cars.

If long-term financing is consummated hereunder, the proceeds of the sale of the long-term notes shall be used to pay the Notes issued pursuant to paragraph 1 hereof, and the security interests granted to secure such Notes shall be released and discharged.

4. In the event that, prior to the maturity of the Notes, the Corporation shall notify IMC of a change in United States or international financial, political or economic conditions which would be likely to prejudice materially the success of the long-term financing of the purchase price for the Cars, the obligations of the Corporation hereunder to acquire and own the Cars and to arrange for such long-term financing shall, upon notice to IMC, terminate forthwith, and the Corporation shall promptly convey all its right, title and interest in the Cars to IMC or its nominee. The Corporation's agreement hereunder to arrange for long-term financing of the purchase price of the Cars shall further be subject to the fulfillment by IMC of customary closing conditions and the delivery of documentation satisfactory in form and substance to the Corporation and to the purchasers of the long-term notes referred to in paragraph 3 hereof.

5. Capitalized Cost, as used herein, shall include (a) the Corporation's total purchase price of the Cars, (b) all interest on the Notes issued pursuant to paragraph 1 hereof accrued from the respective dates thereof to the date of payment thereof, (c) legal and brokerage fees and all printing costs incurred by the Corporation in connection with the financing of the Cars, (d) all filing and registration fees in connection with this Agreement and the transactions hereby contemplated, (e) all expenses incurred by the Corporation or IMC under the Purchase Agreement hereunder, and (f) the cost of all insurance required pursuant to this Agreement.

6. IMC shall indemnify and hold harmless the Corporation, its parent corporation, shareholders, officers, directors, employees, agents and its and their successors and assigns from and against all liabilities and obligations to ACF under the Purchase Agreement and all related agreements; provided that IMC shall have no obligation under this paragraph with respect to any such liabilities or obligations which arise as a result of the Corporation's failure to comply with its agreements contained in the Purchase Agreement Assignment.

7. All notices and other communications hereunder shall be in writing and shall be sent by certified or registered mail, postage pre-paid, addressed as follows:

If to IMC:

International Minerals & Chemical Corporation
IMC Plaza
Libertyville, Illinois 60048
Attention: Richard Rock

or

If to the Corporation:

Hopper Holdings Corporation
c/o Lehman Special Services, Inc.
One William Street
New York, New York 10004
Attention: Alan R. Batkin

or to such other address as is supplied by either party by notice so given.

8. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

9. This Agreement sets forth the entire agreement and understanding of the parties relative to the subject matter hereof and supersedes all prior agreements, whether oral or written, relative hereto. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless hereafter made in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement in one or more counterparts as of the day and year first above written.

HOPPER HOLDINGS CORP.

By

Alan R. Batkin

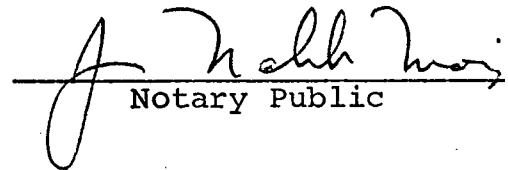
INTERNATIONAL MINERALS & CHEMICAL
CORPORATION

BY

Geo. Kennedy

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

On this 26th day of September, 1974 before me,
personally appeared Alan R. Batkin, to me personally known,
who being by me duly sworn says that he is the President
of HOPPER HOLDINGS CORP., that the seal affixed to the
foregoing instrument is the corporate seal of said corpora-
tion, that said instrument was signed and sealed on behalf
of said corporation by authority of its Board of Directors,
and he acknowledged that the execution of the foregoing
instrument was the free act and deed of said corporation.


Notary Public

[Seal]

J. WEBB MONIZ
Notary Public, State of New York
No. 60-2748320
Qualified in Westchester County
Certificate Filed in New York
Commission Expires March 30, 1975

STATE OF New York)
COUNTY OF New York) ss.:

On this 20th day of September, 1974, before me personally appeared *George D. Kennedy* to me personally known, who being by me duly sworn, says that he is the *Executive Vice President* of INTERNATIONAL MINERALS & CHEMICAL CORPORATION, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

J. Webb Moniz

Notary Public

[Seal]

J. WEBB MONIZ
Notary Public, State of New York
No. 60-2748320
Qualified in Westchester County
Certificate Filed in New York County
Commission Expires March 30, 1975

SCHEDULE A

<u>Quantity</u>	A.A.R. Mechanical <u>Designation Code</u>	<u>Road Numbers</u>
154	LO	IMCX 10196 to IMCX 10349